

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

MONDAY, THE 24TH SEPTEMBER 2007 / 2ND ASWINA 1929

Bail Appl..No. 5731 of 2007()  
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CRIME NO.119/07 OF CHITTARIKKAL POLICE STATION

PETITIONER : APPLICANT/ACCUSED  
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MOOLAMKUZHIYIL REMANI, AGED 50 YEARS,  
W/O.LATE VISWANATHAN, ADUKALAMPADY,  
ELERITHATTU (P.O), WEST ELERI VILLAGE,  
HOSDURG TALUK.

BY ADV. SRI.T.K.VIPINDAS

RESPONDENTS: COMPLAINANT  
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THE STATE OF KERALA,  
REPRESENTED BY PUBLIC PROSECUTOR,  
REPRESENTING S.H.O. CHITTARIKKAL.

BY PUBLIC PROSECUTOR SRI.JAI GEORGE.

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION  
ON 24/09/2007, THE COURT ON THE SAME DAY PASSED THE  
FOLLOWING:

**R. BASANT, J.**

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**B.A. No. 5731 OF 2007**  
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**Dated this the 24<sup>th</sup> day of September, 2007**

**ORDER**

Application for anticipatory bail. The allegation is that 1.125 litres of arrack was found concealed in the lean to attached to the house of the petitioner. The petitioner was allegedly present when the detection was made; but she was not arrested. Investigation is in progress. The petitioner apprehends imminent arrest.

2. According to the learned counsel for the petitioner, the petitioner is absolutely innocent. She is not responsible for the article found in the lean to. In fact, a tenant was in occupation. Such tenant had vacated. The petitioner is not responsible for the quantity of contraband liquor allegedly found present in the house/lean to belonging to her. In these circumstances, the petitioner may be granted anticipatory bail,

it is prayed.

3. The learned Public Prosecutor opposes the application. The investigation reveals the complicity of the petitioner. At any rate, there are no circumstances justifying the invocation of the extraordinary equitable discretion under Sec.438 of the Cr.P.C. The petitioner may be directed to appear before the Investigating Officer or the learned Magistrate having jurisdiction and then seek regular bail, submits the learned Public Prosecutor.

4. I find merit in the opposition by the learned Public Prosecutor. I am unable to find any features in this case which can justify the invocation of the extraordinary equitable discretion under Sec.438 of the Cr.P.C. This, I am satisfied, is a fit case where the petitioner must resort to the ordinary and normal course of appearing before the Investigating Officer or the learned Magistrate having jurisdiction and then seek regular bail in the ordinary course.

5. In the result, this bail application is dismissed; but with the observation that if the petitioner surrenders before the Investigating Officer or the learned Magistrate and seeks bail,

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after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits and expeditiously.

Sd/-

**(R. BASANT, JUDGE)**

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P.S. to Judge